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TESTIMONY OF

**DONNA TANOUE
CHAIRMAN
FEDERAL DEPOSIT INSURANCE CORPORATION**

BEFORE THE

**TASK FORCE ON THE HEADWATERS FOREST AND RELATED ISSUES
OF THE COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

**December 12, 2000
Room 1334, Longworth House Office Building**

Mr. Chairman and members of the Task Force, I am here today in response to the Committee's subpoena to respond to your questions about litigation filed by the Federal Deposit Insurance Corporation (FDIC) against Mr. Charles Hurwitz in connection with the failure of United Savings Association of Texas (USAT).

The FDIC protects depositors when a bank fails by fully insuring their deposits up to \$100,000. While deposit insurance is generally funded by assessments against insured financial institutions, taxpayer funds were used to cover losses in the failures of over 800 savings and loans, such as USAT, that failed during the late 1980's and early 1990's at a cost to taxpayers of approximately \$130 billion.

After a financial institution fails, the FDIC protects insured depositors, sells remaining assets, and investigates the cause of the failure. If the FDIC investigation reveals that individuals affiliated with the failed financial institution engaged in activity that caused material loss to the institution, the FDIC may file a professional liability lawsuit against those individuals to recover damages caused by their misconduct. The FDIC is required by statute to minimize the loss to the deposit insurance funds and the taxpayers. The efficient sale of assets and the cost-effective pursuit of meritorious professional liability claims are important components of meeting the FDIC's statutory obligations. As a result of the FDIC's careful review, approximately 25 percent of financial institution failures result in professional liability suits.

It is the policy of the FDIC not to comment substantively or testify regarding ongoing litigation as this can result in a waiver of the FDIC's privileges in the litigation and can harm the ability to litigate the matter to a successful conclusion for the benefit of the taxpayers. Although it is highly unusual that the FDIC is asked to testify regarding the substance of ongoing litigation, the Committee's subpoena would appear to compel FDIC testimony even where responses would be covered by various legal privileges in the ongoing litigation. I would like to reiterate that by testifying subject to the Committee's subpoena, the FDIC does not waive any of its privileges in the ongoing litigation.

The FDIC is involved in thousands of cases and only a few come to my direct attention. This litigation involves one of the largest financial institution failures in American history, costing the taxpayers \$1.6 billion. I have listened to and considered the arguments made directly to me by representatives of Mr. Hurwitz, including those made by Mr. Isaac. However, I have found no compelling reason to take the extraordinary step of reversing the decisions of prior FDIC Boards, overruling the FDIC's Legal Division and taking this case out of the hands of the judicial system.

Finally, Mr. Chairman, most of the events that the Task Force indicated are the subject of its investigation took place well before I became Chairman of the FDIC in May 1998. Therefore, I have no personal knowledge of any of the facts considered or decisions made by any prior Chairman or Board of Directors of the FDIC. However, I am accompanied today by William Kroener, General Counsel of the FDIC, who can

respond to questions with personal knowledge regarding matters prior to my becoming Chairman. I have attached a brief statement by Mr. Kroener to my testimony.

This concludes my statement and Mr. Kroener and I are prepared to respond to your questions.